IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPEAL NO.16 OF 2006
IN
ARBITRATION PETITION NO.224 OF 2005

Procyon Offshore Services Pvt.Ltd. .. Appellant
V/s.
Abhay Ocean India Pvt.Ltd. .. Respondent

Mr.A.K.Lulla for the appellant.

Mr.Kedar Wagle for the respondent.

CORAM : R.M. LODHA &
ANOOP V. MOHTA, JJ

DATED : 19TH JANUARY, 2006

P.C.

Heard Mr.A.K.Lulla, the learned counsel for the appellant.

2. The thrust of the argument raised by the learned counsel for the appellant in challenging the judgment of the learned Single Judge and the award by the Arbitral Tribunal is that the consent given by the appellant to the appointment of the Arbitrator was withdrawn but despite that the Arbitrator proceeded with the arbitration proceedings and passed the award which is without jurisdiction.

3. The contention does not appeal us.

4. In relation to charter party agreement for release of Tug-Fintug-I, the dispute arose between the parties. A notice of arbitration dated 19.8.2004 was served upon the present appellant.

By the said notice, the present respondent informed the appellant about the appointment of Mr.Kiran B. Kakatkar as Arbitrator on their behalf. The appellant was called upon to appoint his nominee for the Arbitral Tribunal. In response to the said notice dated 19.8.2004, the appellant agreed that the matter be referred to the sole arbitration of Mr.Kiran B.Kakatkar, nominated by the respondent.The respondent by letter dated 20th September, 2004, accordingly, informed Mr.Kiran B. Kakatkar about his appointment as sole arbitrator by consent. The sole arbitrator thereafter by his letter dated 6.10.2004 called for the preliminary meeting on 24th October, 2004. On 20th October, 2004, the appellant made an application before the arbitrator that they would like to withdraw the consent and nominate their nominee on the Arbitral Tribunal. No reason for withdrawal of the consent was mentioned in the application save and except that it would be in the interest of justice. The sole arbitrator rejected the application made by the present appellant by the following order:

> "On going through the submissions, I find that neither Applicants nor the Respondents have disputed the fact that the present Arbitral Tribunal was duly constituted by virtue of the consent given by both the parties to the dispute. I also find that the Applicants have not challenged the appointment of the arbitrator. Applicants have merely sought change in the Tribunal on grounds of interest of justice and equity. However the Applicants have not clarified as to why and how the interest of justice and equity will be better served if the change requested by the Applicants is granted. The vague assertion of the Applicants does not conform to the grounds of challenge outlined in the Section 12 of the Arbitration & Conciliation Act, 1996.
> The Application is, therefore, dismissed."

5. Thereafter, it appears that the appellant filed petition under section 11 of the Arbitration and Conciliation Act, 1996 seeking change in the Arbitral Tribunal and prayed before the Arbitrator for keeping the arbitration proceedings in abeyance. The sole arbitrator did not find any justification in deferring the arbitration proceeding and passed the order on 14th December, 2004 itself thus-

> "The Advocate for the Respondents, Mr.V.B.Deshpande disclosed that the Respondents had filed a petition under Section 11 seeking change in the duly constituted Arbitration Tribunal. Mr.Deshpande requested that the arbitration proceedings may be kept in abeyance till the petition was disposed off or at the least for a period of 10 days. The Arbitrator pointed out that the application of the Respondents seeking the change in the Arbitration had already been heard by the Arbitrator and was dismissed by an Order Dated November 25, 2004. He further stated that the main purpose of the preliminary meeting was to decide the Time Table and as such the Arbitrator did not see any merit in suspending the Arbitration proceedings. The request of the Respondents for keeping the proceeding in abeyance was rejected.
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> 2. Arbitrator pointed out that the Arbitration was an alternative mechanism of dispute redressal and was expected to be speedy and less expensive to the litigants. The Arbitrator directed that a realistic schedule may be drawn up for the proceedings and further stated that the Arbitrator would not be inclined to grant extension to deadlines stipulated in the time table, unless there were very compelling reasons to do so. The Arbitrator sought cooperation of both the parties and their advocates in this respect. The Arbitrator also requested that all concerned observe punctuality so that time allotted for the purpose of the Arbitration proceedings was fully utilised.
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> 3. On further discussion the Arbitrator directed that the following would constitute the schedule of the arbitration.

Schedule/Date	Event
January 10, 2005	Claimants to file statement of claim
Within 3 weeks thereof	Inspection of documents by the Respondents
Within 3 weeks thereof	Respondents to file reply and counterclaim
Within 3 weeks thereof	Claimants to file rejoinder and reply to counterclaim
Within 3 weeks thereof	Respondents to file rejoinder to the reply to counterclaim
April 11, 2005	Framing of the Issues at 1630 Hours at the Office of the Arbitrator at Gr.Flr. Elysium Mansion, Walton Road, Mumbai-400 039"

6. No order was passed in the petition under section 11 made by the appellant until the award came to be passed by the sole arbitrator on 28th April, 2005. On 29th April, 2005, the arbitration application made by the appellant under section 11 was disposed of as in the meanwhile, the arbitrator had already passed the award.

7. The learned Single Judge held that as per the provisions of the Arbitration and Conciliation Act, 1996, once the Arbitral Tribunal was constituted by the consent of the parties, the objection to the constitution of the Arbitral Tribunal could only be taken by following the procedure laid down by sections 12 and 13 of the Act. The said procedure admittedly, has not been followed. We find no illegality in the consideration of the matter by the learned Single Judge.

8. It is not in dispute that the mandate of the arbitrator was not terminated under Section 14 or 15 of the Act.

9. The appeal does not deserve to be admitted. Dismissed in limine.

Oral prayer for stay is rejected.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)